

No. 23-13709-A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

Channing Hutchins

Plaintiff-Appellant

v.

Frontier Airlines, Inc.

Defendant-Appellee

Appeal from the United States District Court

for the Southern District of Florida

No. 9:23-cv-80210-RLR

DEFENDANT-APPELLEE FRONTIER AIRLINES INC.'S MOTION TO STRIKE

Defendant, FRONTIER AIRLINES, INC. (“Frontier”), through counsel, hereby moves to strike Plaintiff-Appellant’s November 21, 2023 filing, and in support states the following:

1. Plaintiff filed his motion for medical evaluation on November 21, 2023 stating that a mental health evaluation was necessary “[t]o help determine his capability to litigate this matter.” He further alleges that “this process will provide the court with the necessary information to determine if the case meets the specific criteria for appointment of counsel in this civil suit.”

2. This motion should be stricken as procedurally improper.

3. The District Court for the Southern District of Florida previously denied Plaintiff’s request for court-appointed counsel on April 10, 2023, finding that no exceptional circumstances were present justifying appointment of counsel, as required. (*See* Doc. 28). This Court has

explicitly held that whether such exceptional circumstances exist is a determination *committed to the district court's discretion*. *Steele v. Shah*, 1996 U.S. App. LEXIS 23301 at *17 (11th Cir. July 17, 1996). (Emphasis added).

4. The motion should further be stricken as untimely, and because Plaintiff has repeatedly shown his ability to litigate without the assistance of counsel. Plaintiff has litigated this matter in both state and federal court for nearly a year, including filing pleadings, several motions, written discovery, participating in mediation, and engaging in both conferral and settlement discussions with opposing counsel. The District Court granted Frontier's Motion for Summary Judgment on September 5, 2023 and subsequently entered an Order of Final Judgment on October 23, 2023. (*See* . (*See* Doc. 49, Doc. 57).

5. Thus, any need for a mental health evaluation should have been requested in March 2023 within Plaintiff-Appellant's initial motion for court-appointed counsel, not after the unsuccessful conclusion of his case. (*See* Doc. 23).

WHEREFORE, Defendant FRONTIER AIRLINES, INC., respectfully requests this Court to strike Plaintiff's November 21, 2023, filing and granting such other and further relief as the Court deems just and proper.

Dated: December 5, 2023

Respectfully submitted,

/s/ Steven D. Lehner

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CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to Plaintiff, Channing L Hutchins, channinghutchins@outlook.com.

/s/ Steven D. Lehner

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